

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.572 OF 2005

Gaffor Budhan Shaikh ...Petitioner
Versus
The State of Maharashtra & Others ...Respondents

Shri Jayesh B. Kocheta for the Petitioner.
Shri K.V.Saste , A.P.P. , for the State.

CORAM: ABHAY S. OKA, J.
DATE: 6TH JUNE, 2005.

P.C.:

1. This petition is kept for final disposal at admission stage.
2. The challenge in this petition is to the order of externment passed by the Respondent no.3 under section 56(b) of the Bombay Police Act, 1951 and the confirmation of the said order by the Respondent no.2 in the statutory appeal preferred by the petitioner.
3. The Learned Counsel appearing for the petitioner has tendered a typed copy of show-cause notice issued by the Respondent no.4 dated 30th July, 2004. By the said show-cause notice, the

petitioner was called upon to show cause why action should not be taken against the petitioner under section 56(b) of the Bombay Police Act, 1951. The show-cause notice relates to the area covered by Bhosari Police Station, District- Pune. The Learned Counsel for the petitioner pointed out that an order of externment dated 28th October, 2004 has been passed directing the externment of the petitioner from the area within the jurisdiction of the Commissioner of Police, Pune, District-Pune, District- Raigad, District-Ahmednagar, and the District-Satara. The Learned Counsel for the Petitioner submitted that when show-cause notice is relating to the area falling within jurisdiction of one police station, order of externment could not have been passed extending to four districts. He pointed out that in the appeal preferred by the petitioner , a ground was taken on the above aspect. He submitted that the order is an excessive order. The Learned A.P.P. for the Respondents supported the impugned judgment and order.

4. On the plain reading of the Show-cause notice, it is very clear

that the show-cause notice relates to the area falling within the jurisdiction of Bhosari police station and order of externment relates to the entire jurisdiction of the Commissioner of Police, Pune and four districts. On plain reading, it is crystal clear that the order is passed in excess of jurisdiction. As no show-cause notice was given to the petitioner calling upon him to show cause as to why he should not be externed from the jurisdiction of the aforesaid four districts, the order passed is also in breach of principles of natural justice.

5. As held by a decision of a Division Bench reported in 1988(2) Bom.C.R. Page 724, (Umar Mohammed Malbari V/s. K.P.Gaikwad & Ors.) such excessive order can not be corrected by this Court and the order will have to be struck down.
6. In this view of the matter, the petition deserves to be allowed only on the aforesaid ground. It is obvious that notwithstanding setting aside of the impugned orders, it is always open for the respondents to take appropriate action against the petitioner in accordance with the Law.

7. Accordingly, rule is made absolute in terms of prayer (b) and (c). It is made clear that notwithstanding this order, it will be open for the respondents to take action against the petitioner in accordance with the Law.

8. Certified copy expedited.

Judge.